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*Attorneys for Stardock Systems, Inc.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

STARDOCK SYSTEMS, INC.,

Plaintiff,

vs.

PAUL REICHE III and ROBERT  
FREDERICK FORD,

Defendants.

AND RELATED COUNTERCLAIM

Case No.: 4:17-cv-07025-SBA

**DECLARATION OF DAVID L. MAY IN  
SUPPORT OF STARDOCK SYSTEMS, INC.'S  
MOTION FOR PRELIMINARY INJUNCTION**

DECLARATION OF DAVID L. MAY IN SUPPORT OF  
MOTION FOR PRELIMINARY INJUNCTION

Case No. 17-cv-07025-SBA

1 I, David L. May, declare:

2 1. I am a partner at Nixon Peabody LLP, counsel of record for plaintiff Stardock  
3 Systems, Inc. (“Stardock”). I make this declaration in support of Stardock’s Motion for  
4 Preliminary Injunction. Unless otherwise noted, I have personal knowledge of the following  
5 matters and, if called upon to do so, would and could testify competently to the same in a court of  
6 law.  
7

8 2. Defendant Paul Reiche III (“Reiche”) contends in his Declaration in Support of  
9 Defendants’ Opposition (hereinafter “Reiche’s Decl.”) that the 1988 Agreement expired as long  
10 ago as 2001, allegedly due to Accolade, Inc.’s (“Accolade”) and/or Atari Inc.’s (“Atari”) non-  
11 payment of royalties. *See* Reiche Decl., Dkt. 64-1, ¶ 27. As alleged in Stardock’s Second  
12 Amended Complaint, there are significant issues, though, as to whether the license purported to  
13 be granted by Reiche to Accolade pursuant to the 1988 License Agreement was ever a valid  
14 license in the first place since, in light of communications between counsel for Reiche and  
15 Defendant Robert Frederick Ford (“Ford”) and the U.S. Copyright Office (“USCO”) during the  
16 examination of the application for U.S. Copyright Registration No. PA 2-071-496 (the “496  
17 Registration”) (*see* Declaration by Robert A. Weikert in Support of Stardock’s Motion for  
18 Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction (“Weikert  
19 Decl.”), Dkt. 56-7, Ex. A, ¶¶ 73 and 78, Ex. T), clearly suggesting that Reiche did not own the  
20 rights he purported to license to Accolade. Thus, there are serious questions as to whether  
21 Accolade and Atari were obligated to pay royalties to Reiche in the first place, in view of  
22 Reiche’s misrepresentations to Accolade in the 1988 License Agreement.  
23  
24

25 3. Reiche also contends in his declaration that the license granted to Accolade is not  
26 assignable pursuant to Paragraph 12.1 of the 1988 License Agreement. *See* Reiche Decl., Dkt.  
27

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28 DECLARATION OF DAVID L. MAY IN SUPPORT OF  
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Case No. 17-cv-07025-SBA

1 64-1, ¶ 40. Again, whether there were any licensed rights for Reiche to assign in the first place is  
2 clearly in question since his counsel's communications with the USCO confirm that Reiche did  
3 not own the rights he purported to license to Accolade. *See* Weikert Decl., Dkt. 56-7, Ex. A, ¶¶  
4 73 and 78, Ex. T.

5  
6 4. During the examination of the '496 Registration, the USCO also questioned  
7 counsel for Reiche and Ford regarding suggestions that *Star Control II* was produced on behalf of  
8 Reiche's and Ford's company, Toys for Bob, and whether or not Toys for Bob should actually be  
9 listed as the author and claimant of the registration. *Id.* Upon information and belief, Toys for  
10 Bob is a subsidiary of the well-known game publishing company, Activision Publishing, Inc.  
11 ("Activision"). Attached hereto as **Exhibit 1** is a screenshot from Activision's Toys for Bob's  
12 studio website that at one time displayed *Star Control I* and *Star Control II* alongside other games  
13 that, upon information and belief, were developed by Toys for Bob.

14  
15 5. In the Reiche Declaration, Reiche states that "To the best of his recollection", the  
16 third party creators "agreed to assign" any copyrights to Reiche and Ford and he references  
17 having now received "signed written agreements" confirming these alleged previous agreements  
18 to assign. Reiche Decl., ¶ 14. Reiche and Ford have produced during discovery these purported  
19 copyright assignments from various individuals. It is unclear from these assignments, though,  
20 what, if any, creative expression was actually authored by these various individuals and is being  
21 alleged to have been transferred to Reiche and Ford.

22  
23 6. Stardock has subpoenaed documents from those authors with whom Reiche and  
24 Ford claim to have purported assignment agreements. Based on the productions in response to  
25 the subpoenas, it still remains unclear what copyrightable material (if any) was actually created  
26

1 by most, if not all, of the authors. Moreover, Reiche's and Ford's legal counsel has confirmed  
2 that the third-party authors' production in response to Stardock's subpoenas is complete.

3 7. The various purported assignments produced from the noted authors were  
4 executed in March and April 2018 and well-after Stardock initiated this litigation and after Reiche  
5 and Ford filed their counterclaims in February 2018 based on copyrights allegedly covered by  
6 these assignments.  
7

8 8. The following authors are also listed in the credits of the game, but no assignments  
9 from them have been produced during discovery to date: Kyle Balda for the game art, and Paula  
10 Polley, Dick Morgan, Jeff Rianda and W.D. Robinson for the manual art.

11 9. It is clear from all the evidence that Reiche's and Ford's claims of ownership of  
12 intellectual property rights to the Classic Star Control Games (*i.e.*, *Star Control I*, *Star Control II*  
13 and/or *Star Control III*) is entirely tenuous and convoluted at best, and contrary to Reiche's  
14 alleged rendition of the facts and interpretation of the contract terms at issue in his declaration.  
15

16 10. On December 6, 2017, Stardock received notice from GOG Limited (hereinafter,  
17 "GOG") that a DMCA notice was submitted by Reiche requesting the removal of the Classic Star  
18 Control Games and related materials from GOG. Upon information and belief, as a result of the  
19 DMCA notice, GOG removed Stardock's Classic Star Control Games and related materials from  
20 its platform. On December 11, 2017, we, as counsel for Stardock, submitted a counter-notice to  
21 GOG advising that the DMCA notice was wholly inaccurate and the Classic Star Control Games  
22 and related materials should be immediately reinstated on the GOG. At the time, Reiche did not  
23 have any copyright registrations for the Classic Star Control Games. Additionally, upon  
24 information and belief, Reiche did not provide any evidence to GOG that he was the alleged  
25 owner of the claimed rights in the Classic Star Control Games. Stardock also is the owner of the  
26

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28 DECLARATION OF DAVID L. MAY IN SUPPORT OF  
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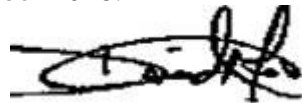
1 copyright registration for *Star Control III*. Pursuant to Section 512(g)(2)(c) of the DMCA, GOG  
2 reinstated the removed materials on its platform.

3 11. Likewise, on December 7, 2017, Stardock received notice from Valve Corporation  
4 d/b/a Steam.com (hereinafter “Steam”) that a DMCA notice was submitted by Reiche requesting  
5 the removal of the Classic Star Control Games and related materials from Steam. Upon  
6 information and belief, as a result of the DMCA notice, Valve removed Stardock’s Classic Star  
7 Control Games and related materials from Steam. On December 11, 2017, we, as counsel for  
8 Stardock, submitted a counter-notice to Steam similarly advising what was advised to GOG.  
9 Pursuant to Section 512(g)(2)(c) of the DMCA, Steam reinstated the removed materials on its  
10 platform.  
11

12 12. These earlier DMCA notices were submitted before Reiche’s and Ford’s  
13 counterclaims were filed in this litigation, which is, upon information and belief, why GOG and  
14 Steam continued to sell the games after receipt of the counter-notices in compliance with Section  
15 512(g)(2)(c) of the DMCA.  
16

17 I declare under penalty of perjury under the laws of the United States and the State of  
18 California that the foregoing is true and correct.

19 Executed this 21st day of September 2018.

20  
21 

22 David L. May